March 26, 2012

TO: Honorable Members, Senate Committee on Budget and Fiscal Review
Honorable Members, Assembly Budget Committee

FROM: Patricia Ryan, Executive Director;
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California Mental Health Directors Association

SUBJECT: Governor's FY 2012-13 January Budget for Community Mental Health

On behalf of the California Mental Health Directors Association (CMHDA), which represents the directors of public mental health authorities in counties throughout California, I am writing to communicate our perspective on the Governor's substantial January Budget proposals for Fiscal Year (FY) 2012-13 that would impact California's community mental health system.

2011 Realignment: Implementation of Medi-Cal Specialty Mental Health Realignment

The 2011-12 state budget signed by Governor Brown included the Governor's proposal to realign many public safety and health and human services to counties. Among these realigned programs are Medi-Cal Specialty Mental Health services and substance use treatment services (including Drug Medi-Cal). However, since AB 100 (Committee on Budget, Statutes of 2011) provided funding for Medi-Cal Specialty Mental Health, including Early and Periodic Screening, Diagnosis and Treatment (EPSDT), for FY 2011-12, these two programs are not realigned until FY 2012-13.

CMHDA is concerned with the adequacy of the Administration's baseline estimated revenues to be allocated to counties for Medi-Cal Specialty Mental Health and EPSDT. In particular, the January Budget includes baseline allocations that net to $34.9 million less than the figures presented by the Administration last summer. Notably, the EPSDT figures are $85 million less in the January Budget, despite the Governor's proposal to transfer Healthy Families enrollees to Medi-Cal and the likely impact of the Katie A. settlement on the EPSDT caseload. Additionally, the factors being utilized by the Administration for developing the allocations for Medi-Cal Specialty Mental Health and EPSDT include prior-year state General Fund savings approaches, which are no longer relevant under 2011 Realignment since the fund source for the programs are new dedicated tax revenues. Also, the Administration applied State Maximum Allowances (state reimbursement rate caps) to its estimates, which are eliminated beginning FY 2012-13 due to the enactment of AB 1297 (Chesbro, Statutes of 2011). *We urge the Legislature and Administration to ensure that the baseline figures for Medi-Cal Specialty Mental Health and EPSDT are adequate for counties to provide medically necessary services to eligible beneficiaries in these federal entitlement programs.*

Additionally, CMHDA recommends the following key policy issues be addressed in legislation to enact the 2012-13 realignment of Medi-Cal Specialty Mental Health and EPSDT to counties.

- **Allocations and Distributions of Funds to Counties:** In a careful review of existing statutes, CMHDA has identified many policies that must be repealed or significantly amended to reflect that Medi-Cal Specialty Mental Health and EPSDT will be funded through the 2011 Realignment dedicated revenues.[1] In addition to modifying this new source of program funds, the cost-sharing arrangement between the state and counties must also be amended since the state budget will no longer provide an allocation of state General Funds through the state budget process. CMHDA proposes that new statutory language be added to specify the manner in which county distributions of 2011 Realignment funds for these programs will be made. This language could be modeled after AB 100 (Committee on Budget, Statutes of 2011), which requires 2011-12 redirected Mental Health Services Act funds for Medi-Cal Specialty Mental Health and EPSDT to be allocated by the State Controller, based on a formula determined by the state (Department of Finance) in consultation with the California Mental Health Directors Association [see Welfare and Institutions Code (WIC) 5892 (j)].
- **First Right of Refusal in Contracting with the State:** Under Realignment 2011, the state is realigning to counties the financial risk and responsibility for providing Medi-Cal Specialty Mental Health and EPSDT services to eligible beneficiaries. Therefore, it is reasonable to delete existing statutes that give counties the *voluntary option* of contracting with the state to serve as the county Mental Health Plan (MHP).[2] Counties must carefully consider the current mandate protections provided under Proposition 1A for realigned programs, as well as the potential future protections that would be provided by Governor Brown's ballot measure, the Schools and Local Public Safety Protection Act of 2012, if passed. Additionally, current statute gives the state broad authority to capture any anticipated matching funds from a county (including 1991 realignment funds and Mental Health Services Act funds), should a county exercise its right to refuse to contract with the state. Absent certainty about the Governor's ballot measure to provide counties with state constitutional protections for realigned programs, maintaining this statute poses great risk to counties who could face an unfunded mandate scenario in the event 2011 Realignment funds for this program are insufficient.
- **Self-Insurance Risk Pools:** In order to efficiently implement counties' obligations for Medi-Cal Specialty Mental Health and EPSDT and assure statewide access and compliance with the applicable state plans and waivers, counties of all sizes must be permitted to use Realignment 2011 dedicated sales tax revenues in pooled funding accounts to address identified regional and statewide needs. Existing law currently limits the establishment of risk pools to small counties (population under 200,000).[3]
- **Administrative Activities:** While existing law limits the state's imposition of administrative requirements for Medi-Cal Specialty Mental Health, these provisions might be strengthened to ensure counties are consulted prior to the addition of any new administrative requirements.[4] Since counties will be administering Medi-Cal Specialty Mental Health using the limited resources provided by 2011 Realignment dedicated revenues, it will be more important than ever to contain the state's administrative requirements to ensure counties have adequate resources to meet the entitlement service needs of eligible populations. Administrative requirements should be designed to

[1] See WIC Sections 5720, 5724, 5778(c)(1) through (4), 5778(c)(6) through (9), and 5778(d)(2).
[2] See WIC Sections 5775, 5777, 5897(f), and 14685.
[3] See WIC Section 5778(c)(4)(D).
[4] See WIC Sections 5750 and 14684.

ensure federal requirements are met, with additional state requirements significantly limited.

Clarifications to the Mental Health Services Act

CMHDA supports the majority of the Governor's proposals to streamline and clarify requirements in the Mental Health Services Act (MHSA), as found in Trailer Bill Language (TBL) #601. Specifically, CMHDA supports the following major components of the Governor's proposal because they are consistent with the state budget adopted last year, as well as with 2011 Realignment, which moves decisions "closer to the people" and streamlines state government. *CMHDA urges the Legislature to approve these proposals:*

- Delete the requirement that the Mental Health Services Oversight & Accountability Commission (MHSOAC) approve counties' plans for Innovation, prior to counties receiving Innovation funds. Instead, authorize counties to expend funds for Innovation, upon approval by the county Board of Supervisors.
- Require counties (instead of the state department) to establish a Prevention and Early Intervention (PEI) program designed to prevent mental illnesses from becoming severe and disabling. Delete the state department's authority to increase PEI allocations under certain conditions. Instead, authorizes counties to increase PEI expenditures under those conditions.
- Delete the requirement that the MHSOAC issue "guidelines" for PEI and Innovation expenditures, and require the county (instead of the state department) to revise its PEI program, in consultation with mental health stakeholders, to reflect what is learned to be effective.
- Delete the current limitation that statewide PEI allocations be increased only when the MHSOAC determines counties are receiving necessary services for SMI persons, have established prudent reserves, and there are additional revenues available in the fund.
- For MHSA 3-year plans, require counties' plans to be adopted by the county Board of Supervisors and submitted to the MHSOAC. Additionally, delete the requirement that the state department establish requirements for the content of counties' plans and updates. Instead, counties would develop plans that are consistent with statutes.
- Delete the requirement that the state department, in consultation with CMHDA, MHSOAC, and the Mental Health Planning Council, annually inform counties of the amounts of funds available for services to children, adults and seniors. This is no longer necessary since starting in FY 2012-13, the Mental Health Services funds will be transferred to the counties on a monthly basis. Each year, the state budget will provide the estimated revenues in the Mental Health Services Fund. All unexpended/unreserved funds will be distributed by the controller to each local Mental Health Service Fund on or before the 15th day of each month. The proportion of unexpended/unreserved funds that each county will receive will be based on a formula developed by the Department of Finance in collaboration with CMHDA.

However, CMHDA has concerns with the following proposals and *urges the Legislature to reject them:*

- The Governor proposes to delete the requirement that counties contract with the state department to implement the services provided under the MHSA.
    - CMHDA supports the language that currently exists in the Act related to the performance contract. We believe the state-county performance contract should be retained for both realignment 1991 and the MHSA, as currently required by

statute. The performance contract was originally developed and added WIC Sections 5650 et seq., during the initial realignment as a way to outline state and county statutory and regulatory responsibilities The MHSA added Section 5897(c) to also implement MHSA programs through the Performance Contract, which we believe is a reasonable way to provide transparency and clarity for the state, the counties and stakeholders.

- The Governor proposes to require the California Department of Public Health (DPH), in consultation with counties and stakeholders, to "administer a project to reduce disparities in mental health." Additionally, prior to making other MHSA allocations, the Governor proposes to appropriate $60 million to DPH for the purposes of this project, on a one-time basis, and permits the funds to be expended without regard to fiscal year.
    - CMHDA opposes this proposal. CMHDA strongly supports a sustainable approach to the development of a statewide project to reduce disparities, but has serious concerns about the Administration's proposal (TBL #601) to amend the Act to give the state the authority to withhold funds from counties for this purpose. We are not only concerned about the precedent of amending the Act to set aside local funds for a state-level project of any kind, but also believe this is inconsistent with the intent of the Act, which is that all MHSA funds (other than those for state administration) be provided to communities where counties and stakeholders develop services that reflect local priorities consistent with the Act. We continue to fully agree that reducing disparities is a major and important stated goal of the Act, and that all counties must implement sustainable programs that demonstrate achievement of this goal. However, before giving the state the authority to appropriate county funds to the state to implement this specific project, we would like to explore whether there are other alternatives to ensuring a statewide approach to this project. Further, it is imperative to the long term sustainability of efforts to reduce disparities that counties be integrally involved in this statewide project, since these funds would otherwise be distributed to local communities for their use.

Transfer Medi-Cal Specialty Mental Health Administration to DHCS

CMHDA supports the Administration's continued efforts to transfer state administrative responsibilities for Medi-Cal Specialty Mental Health from the Department of Mental Health (DMH) to the Department of Health Care Services (DHCS). However, we have identified concerns and questions about a number of provisions contained in the Governor's proposed TBL #614, which are described below.

- **Adds broad authority for DHCS to circumvent public participation in establishing program requirements and sanctions**[5]**:** While CMHDA supports DHCS' desire to review existing DMH administrative directives and regulations to identify modifications that would improve efficiency, we oppose the proposals to give DHCS sweeping authority to utilize non-regulatory methods to establish requirements and sanctions. Specifically, the proposal authorizes DHCS to impose monetary sanctions -- and to choose not to renew its contract -- if a county Mental Health Plan fails to comply with statutes, regulations, or "similar instructions." Additionally, the trailer bill proposes to

[5] See the following WIC Sections of TBL #614: Section 14704 (p. 1); Section 5775(e) (p. 8); Section 5777(b) and (c)(2) (p. 10); Section 5778 (b)(6)(C) (p. 21); and Section 14021.5 (p. 41).

authorize DHCS to use regulations or "other similar instructions" in the establishment of a process for resolution of disputes about claims or recoupments of funds. We believe legislative and regulatory methods – not administrative directives – should be used to describe and authorize the imposition of administrative remedies that could result in the loss of counties' financial resources for realigned Medi-Cal Specialty Mental Health services. The state's legislative and regulatory rulemaking processes offer transparency and provide vital opportunities for public notice and participation. *CMHDA urges the Legislature to reject these proposals.*

- **Authorizes DHCS to withhold *federal* Medicaid funds if a county fails to comply with *state* requirements**[6]. Under existing law, the state is authorized to withhold state funds from counties that do not comply with the state's requirements for Medi-Cal Specialty Mental Health. However, we believe it is inappropriate to authorize DHCS to additionally withhold *federal* matching funds in such cases if a county's expenditures were completed in a manner that complied with all *federal* requirements. *CMHDA urges the Legislature to reject this proposal.*
- **Additional information needed to fully assess some proposals:**
    - On page 5, in WIC Section 5724 (a), the trailer bill proposes to add the phrase "electronic claims processing and interim payment" to an area of law that is related to the methodology used to reimburse counties for Medi-Cal Specialty Mental Health services. We are unclear about the Administration's rationale for adding this language to statute. *CMHDA urges the Legislature to request additional information about this proposal.*
    - On pages 18 and 19, in WIC Section 5778 (b)(4), the trailer bill proposes to strike existing statutes that describe the state's, counties', and subcontractors' financial responsibilities for federal audit exceptions or disallowances. We are unclear of the Administration's rationale for deleting these requirements from existing law. *CMHDA urges the Legislature to request additional information about this proposal.*

Eliminate Funding for Community Treatment Facilities

CMHDA opposes the Governor's proposal to eliminate $750,000 General Fund for Community Treatment Facilities. We believe this proposal could result in significant harm for children and youth, and lead to increased juvenile detentions, acute hospitalization, self-harm, and even suicide for the young persons in need of care at these facilities. Currently, three licensed Community Treatment Facilities offer the highest level of care and supervision available for youth in California. In particular, Los Angeles, San Bernardino, San Diego, and Riverside counties report that these facilities are often the only safe and secure in-state treatment option for children and youth experiencing the most severe and chronic mental health difficulties. *CMHDA urges the Legislature to reject this proposal.*

Increase Counties' Costs for Purchasing State Hospital Beds

CMHDA is concerned with the Governor's proposal to increase counties' costs for purchasing state hospital beds, thereby saving $20 million General Fund. We do not have sufficient information about this proposal to fully determine its impact on counties – particularly about how the state will determine the costs of services that counties would pay that would result in an additional $20 million of charges to counties. We request additional information about the new

[6] See WIC Section 5775 (e) of TBL #614 (p. 8)

rates the Administration proposes to charge counties, and how they arrive at those rates for the purchase of state hospital beds. *CMHDA urges the Legislature to request additional information about this proposal.*

Transfer Incompetent to Stand Trial Treatment to County Jails

CMHDA is concerned about the potential local impact of the Governor's proposal to save $3 million General Fund by "treating defendants found to be incompetent to stand trial in county jails, rather than state hospitals, when medically appropriate." While the Administration's draft trailer bill indicates the state intends to provide the treatment and provide reasonable reimbursement to county jails for the cost of the beds, we need more information about the proposal to fully determine its impact on counties and individuals who are incompetent to stand trial. In particular, we are concerned the proposal does not indicate how many individuals and in what counties the proposal would be implemented. Given the wide variability among county jails, in terms of jail space and treatment capacity, it is vital the Administration provide additional details about the proposal's scope and intent to collaborate with counties. *CMHDA urges the Legislature to request additional information about this proposal.*